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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions	)	MM Docket No. 92-264

To: The Commission

CONSOLIDATED REPLY COMMENTS CONCERNING PETITIONS FOR RECONSIDERATION AND CLARIFICATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules, respectfully submits these Consolidated Reply Comments in support of those Petitions and Comments which request reconsideration of the Commission's rule prohibiting cable operators from acquiring existing SMATVs within their service areas.[1] Cablevision also supports NCTA's Opposition and Time Warner's Comments with respect to the "Petition for Reconsideration and Clarification" filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors and the National Association of Counties ("NATOA Petition").

[1] See, e.g., "Consolidated Comments Concerning Petitions for Reconsideration and Clarification," filed on October 10, 1993 by Time Warner at 2-5 ("Time Warner Consolidated Comments); "Joint Petition for Reconsideration," filed on September 7, 1993 by Multivision Cable TV Corp. and Providence Journal Company ("Multivision Petition") at 2-4; and the "Petition for Clarification Or, Alternatively, For Reconsideration" filed on September 2, 1993 by the National Private Cable Association, MSE Cable Systems, Cable Plus and Metropolitan Satellite ("NPCA Petition") at 10-12.

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List A B C D E

I. The 1992 Cable Act Should Not Be Read to Prohibit Cable Operators From Acquiring Existing SMATVs Within Their Service Areas

As petitioners have asserted, neither the plain language of the 1992 Cable Act nor its legislative history requires the Commission to prohibit cable operators from acquiring existing SMATVs within the service areas.[2] Rather, the 1992 Cable Act simply makes it unlawful for a cable operator "to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system."[3]

On its face, the statutory language requires only that a cable operator offer SMATV in accordance with the terms and conditions of the operator's cable franchise.[4] Neither the 1992 Cable Act nor its legislative history purport to restrict the means by which an operator obtains the facilities to provide SMATV service. Nothing in the Act provides any basis for distinguishing between a cable operator who constructs a facility within its service area and one who acquires a facility within its service area.[5] Nor does the statutory language distinguish

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[2] See id.

[3] 47 U.S.C. § 533(a)(2).

[4] Report and Order and Further Notice of Proposed Rule Making, MM Docket No. 92-264 (July 23, 1993) ("Report and Order") at ¶ 122 (stating that the language "separate and apart from any franchised cable service," refers to the operation of cable-owned SMATV systems in accordance with the terms and conditions of the franchise agreement); Time Warner Consolidated Comments at 2-3; Multivision Petition at 2-3; NPCA Petition at 11-12.

[5] See Time Warner Consolidated Comments at 3; Multivision Petition at 3; NPCA Petition at 11-12.

between an integrated facility and a stand-alone facility, so long as both are operated pursuant to, and not "separate and apart" from, the cable operator's franchise requirements.[6]

Reading such distinctions into the statute is unnecessary to ensure competition in the video distribution marketplace.[7] Permitting cable operators to acquire SMATVs in their cable service areas would not affect the competitive bidding among multichannel distributors that occurs when contracts to provide SMATV service expire or come up for renewal.[8] Even if a cable operator acquired a SMATV in a particular building, nothing would preclude a second video distributor, such as DBS or MMDS, from offering service to that building. As NPCA and Time Warner observe, moreover, restrictions on the acquisition of SMATVs could actually harm competition by discouraging investment in SMATV operators and decreasing the value of their assets.[9] In fact, the primary beneficiary of this rule, as Time Warner notes, is the building owner, who may now purchase the SMATV system, temporarily discontinue service, and reap a windfall by selling the right to provide service to the cable operator or another video distributor.[10]

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[6] See Report and Order at ¶ 122; Time Warner Consolidated Comments at 3. As urged by commenters in the initial proceeding, a reasonable period of time should be permitted to allow a cable operator to conform the SMATV facility to franchise requirements, given the differences in technical and economic characteristics that may exist between the two facilities. See Report and Order at ¶ 115.

[7] See Report and Order at ¶¶ 121-122.

[8] See Time Warner Consolidated Comments at 4.

[9] NPCA Petition at 13, Time Warner Consolidated Comments at 4.

[10] See Time Warner Consolidated Comments at 4.

Finally, permitting cable operators to acquire facilities from SMATV operators would benefit, rather than harm, municipalities, which will garner fees derived from the provision of such service under the terms of cable franchise agreements. Subscribers would also benefit. They are more likely to obtain upgrades and improved customer service from a willing buyer with experience in video distribution than from a disgruntled SMATV operator who is seeking to exit the business and continues to offer service only until a "suitable" buyer is found.

II. The Commission Should Deny NATOA's Request for Reconsideration of the 120-Day Rule

Cablevision also supports NCTA's Opposition and Time Warner's comments on the proposed revision to the 120-day rule set for franchise authority action on cable system transfer requests.[11/] Under NATOA's proposal, that 120-day time period would not begin to run until an operator submits <u>any and all</u> information required by the franchising authority, regardless of whether the information is required by the Commission, by the terms of the franchise or by state or local law.[12/]

NATOA's proposed rule amendment is in no way compelled by the statute, which merely provides that a franchising authority has 120 days to act upon any request that contains "such information as is required in accordance with Commission regulations and by the franchising authority."[13/] As the legislative history indicates, Congress intended for the 120-day period to begin to run when the cable operator has provided all information required by Commission

[11/] <u>See</u> NATOA Petition, filed September 7, 1993; NCTA Opposition, filed October 22, 1993 at 1-3; Time Warner Consolidated Comments at 6-9.

[12/] NATOA Petition at 4.

[13/] 47 U.S.C. § 537(e).

regulations, the existing franchise, and by applicable local law.[14] The Report and Order therefore appropriately requires the 120-day period to begin running once the cable operator has submitted such information. At the same time, the Commission's regulations permit franchise authorities to request such additional information as is "reasonably necessary" to determine the qualifications of the proposed transferee, and require cable operators to respond promptly to such requests.[15]

NATOA's proposed revision is inconsistent with Congress's effort, recognized by the Commission's rules, to safeguard against unwarranted delays in cable system transfers by establishing a time limit on franchising authority action.[16] The Commission should reject the proposed revision, which would create the potential for protracted delays in the transfer process as franchising authorities fish for additional information, result in unwarranted uncertainty for

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[14] H.R. Rep. No. 628, 102d Cong., 2d Sess. 43, 120 (1992); Time Warner Comments at 7-8, NCTA Opposition at 2.

[15] Report and Order at ¶ 86.

[16] Time Warner Consolidated Comments at 6, NCTA Opposition at 3.

the buyers and sellers of cable properties, and render meaningless the 120-day safeguard established by statute for franchise authority approval.[17]

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION

Howard J. Symons
Lisa W. Schoenthaler
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004
202/434-7300

Its Attorneys

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[17]Cablevision has suffered first-hand the effects of allowing a franchising authority discretion to suspend the running of time limits by making requests for additional information. In Massachusetts, the applicable law requires the franchising authority to hold a public hearing on transfer requests within 60 days of the filing of the transfer application and to make a determination on the transfer request within 60 days of the public hearing. Notwithstanding these time limitations, the transfer of one of Cablevision's systems took more than seven months to complete. The franchising authority in that case made voluminous, multiple requests for additional information during this period, and took the position that the time limits would not begin to run until Cablevision fulfilled those requests. These are precisely the delaying tactics which NATOA's proposed revision would permit.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Reply Comments Concerning Petitions For Reconsideration And Clarification of Cablevision Systems Corporation was served on each of the following by either hand delivery or first class mail, postage prepaid, this 1st day of November, 1993.

Lisa W. Schoenthaler

*Alexandra Wilson, Esq.
Federal Communications Commission
2033 M Street, N.W., Room 918A
Washington, DC 20554

*Jacqueline Chorney, Esq.
Federal Communications Commission
2025 M Street, N.W., Room 8002
Washington, DC 20554

Donna C. Gregg, Esq.
Michael Baker, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
Counsel for Multivision Cable TV Corp. and Providence Journal Company

Deborah C. Costlow, Esq.
Thomas C. Power, Esq.
Winston & Strawn
1400 L Street, N.W., Suite 700
Washington, DC 20005
Counsel for National Private Cable Association, et al.

Norman M. Sinel, Esq.
Patrick J. Grant, Esq.
William E. Cook Jr., Esq.
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, DC 20036
Counsel for National Association of Telecommunications Officers and Advisors, et al.

Daniel L. Brenner
Loretta P. Polk
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Aaron I. Fleischman
Arthur H. Harding
Christopher G. Wood
Fleishman and Walsh
1400 16th Street, N.W., 6th Floor
Washington, DC 20036
Attorneys for Time Warner Entertainment Company, L.P.

*By Hand